

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.1267 of 2015
and MP.No.1 of 2015

Annadurai

.. Petitioner

Vs.

1. The Deputy Superintendent of Police,
CBCID, Chennai.
Cr.No.1 of 2013.

2. Bharthi

.. Respondents

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 04.07.2015 made in Crl.MP.No.18930 of 2014 in SC.No.230 of 2014 passed by the learned Principal Sessions Judge, Chennai.

For Petitioner : Mr.P.Ganapathi, No appearance.

For Respondents: Mr.M.Mohammed Riyaz, GA (Crl.side) for R1.
Mr.M.Ghanasekar for R2.

ORDER

The Criminal revision is directed against the order passed by the learned Principal Sessions Judge, Chennai made in Crl.MP.No.18930 of 2014 in SC.No.230 of 2014 dated 04.07.2015, dismissing the discharge petition filed by the petitioner.

2.The learned counsel for the petitioner would contend that the learned Principal Sessions Judge failed to appreciate the fact that the inordinate delay in lodging the complaint is fatal to the prosecution and also continuation of the criminal proceedings against the petitioner is nothing but an abuse of process of law. Section 294(b) was added only in the final report which do not find place in the FIR. There is no ingredients available in the records for the offence under Section 4 of the Dowry Prohibition Act. Section 3(i)(xii) of the SC/ST Act, 1989 is added in the final report, that too after expiry of six months from the date of commencement of investigation. The petitioner is working as Head Constable in Tamil Nadu Special Police, 8th battalion, Delhi and there is no possibilities to contact the defacto complainant. The previous complaint for the very same occurrence, the defacto complainant lodged complaint before the Director General of Police with

different version was closed as mistake of fact. Hence, the defacto complainant has come forward with the present complaint. The learned counsel prays to set aside the order of the trial Court and to allow the revision petition.

3.The learned Government Advocate vehemently contended that there are sufficient incriminating materials available to frame charges on the side of the prosecution to presume the accused would have committed the offence and there are other evidences available, the complaint was preferred with huge delay or not cannot be decided at this stage, there is no illegality or infirmity in the order of the trial Court and prays for dismissal of the revision petition.

4.The learned counsel for the second respondent/defacto complainant would contend that there is no illegality or infirmity in the order of the trial Court and prays to confirm the order of the trial Court.

5.This Court perused the entire records produced on either side, on perusal of the entire typed set of papers filed on the side of the second respondent. LW1 to LW27 have been examined on the side of the prosecution and statement was recorded from LW1 to LW27 and in the additional typed set of papers at page 68 the second respondent had produced her community certificate to show that she belong to SC/ST community.

6.On reading of the above statement of witnesses clearly shows there are sufficient incriminating materials available to frame charges under Sections 417, 506(ii) IPC and Section 4 of the Dowry Prohibition Act and Section 3(i)(xii) of the SC/ST Act to presume that the accused would have committed the above said offences.

7.The learned counsel for the petitioner argued that the complaint was given at belated stage, for which the accused has to be discharged from the offences is liable to be rejected. Further the contention of the learned counsel that all the allegations raised in the complaint are imaginary and there is no date of occurrence has been given, the same cannot be considered at this stage. There are so many statement of witnesses are available to corroborate the witnesses of LW1, this Court has come to a conclusion that the charges levelled against the petitioner cannot be thrown out at the present stage. There are so many incriminating materials available to frame charges against the revision petitioner. Further the arguments of the counsel for revision petitioner regarding the date of occurrence and the complaint before the Director General of Police cannot be considered at this stage, it can be considered at the time of trial after adducing evidences on the side of the prosecution.

8.The learned counsel for the second respondent/defacto complainant in support of his contention produced the following citations :-

1. 1977 CrL LJ 1606(1) - State of Bihar V. Ramesh Singh - wherein it is held that - At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction.
2. (1990) 4 SCC 76 - Niranjan Singh Karam Singh v. Jitendra Bhimraj Bijjaya and others
3. AIR 2000 SC 665(1) - State of MP V. S.B. Johari and others
4. AIR 2002 SC 107 - Munna Devi v. State of Rajasthan and another -the Apex Court held that - it was premature for the High Court to say that the material placed before the trial Court was insufficient for framing the charge or that the statement of the prosecutrix herself was not sufficient to proceed further against the accused-respondent.
5. 2010 (2) SCC 398 - P.Vijayan V. State of Kerala and another
6. (2012) 2 MLJ (CrL) 475 - Panner Selvam v. State rep by Inspector of Police, CBI/SCB, Chennai.
7. 2013 - 2 - LW (CrL.) 541 - R.Anbalagan v. State by Additional Superintendent of Police, CBI, SPE, ACB, Chennai-6.

9.The citations cited on the side of the second respondent is squarely applicable to the facts of the present case. The arguments regarding velocity of evidence of facts stated in the statement cannot be decided at this stage, it is left open for discussion at the time of trial.

10.The trial Court after considering the entire facts and circumstances comes to a conclusion that there are sufficient incriminating materials found for demand of dowry, Jewels etc., The petitioner had sexual intercourse with the second respondent under the guise of marriage and neglected her as she belong to Schedule caste community. This Court finds no illegality or infirmity in the order passed by the learned Principal Sessions Judge, Chennai and the same does not warrant any interference by this Court.

11.In the result, the criminal revision is dismissed. Consequently, connected miscellaneous petition is closed. The trial Court is directed to dispose of the main case within a period of three months from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar (CS IV)

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Sub Asst. Registrar

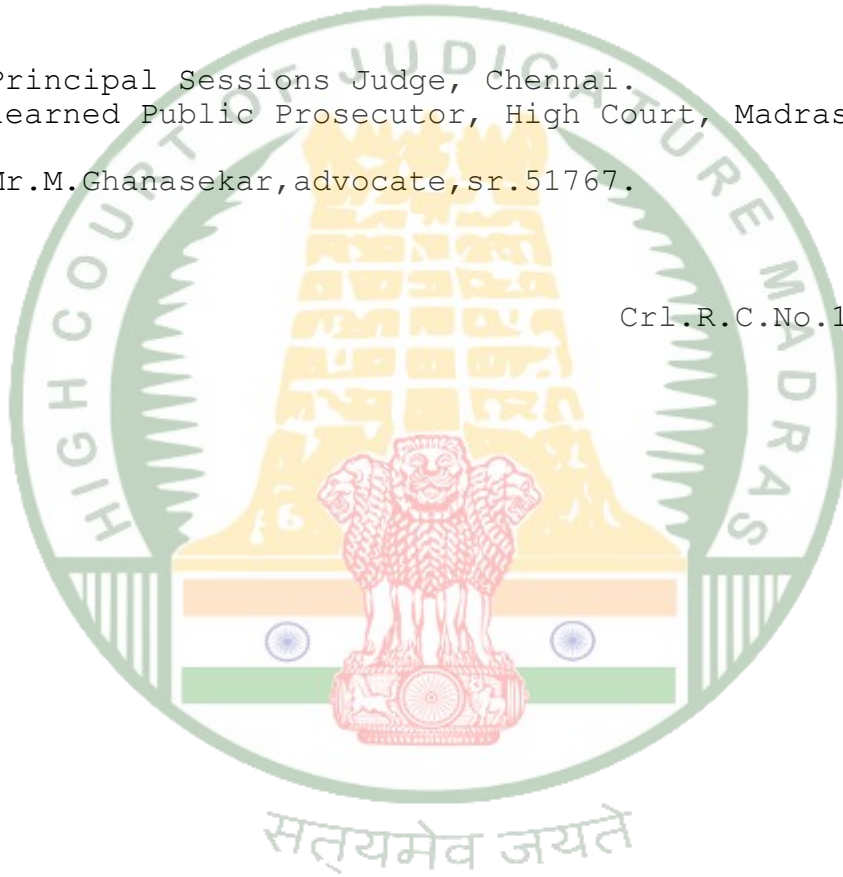
To

1. The Principal Sessions Judge, Chennai.
2. The learned Public Prosecutor, High Court, Madras.

+2 cc to Mr.M.Ghanasekar,advocate,sr.51767.

sr(co)
krd 23/9

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